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GENOCIDE TRIALS IN THE INTERNATIONAL CRIMINAL COURT: CHALLENGES OF FACT-FINDING, THE UKRAINIAN CASE AND ECHR STANDARDS

Abstract

The prosecution of genocide in the International Criminal Court (ICC) presents significant challenges in fact-finding, evidence collection, and legal interpretation. This article examines the complexities of proving genocidal intent, the admissibility of evidence, and the role of international cooperation in ensuring accountability. A particular focus is placed on the Ukrainian case, analyzing the legal and procedural hurdles in establishing genocide under the Rome Statute. Furthermore, the study explores the European Court of Human Rights (ECHR) standards relevant to genocide trials, emphasizing the intersection between human rights law and international criminal justice. By comparing ICC and ECHR approaches, this research highlights the necessity for robust investigative mechanisms, witness protection, and compliance with due process standards. The findings underscore the importance of strengthening international legal frameworks to enhance the effectiveness of genocide prosecutions.

Key Words: *Criminal proceedings, due process, evidence admissibility, fact-finding, investigation of international crimes, international cooperation, prosecutor, victims' rights, witness protection.*

Introduction

The relevance of the research topic. Genocide is one of the most severe crimes that threatens fundamental human rights, endangering the existence of entire ethnic, national, racial, or religious groups. Its prevention, investigation, and judicial prosecution are key tasks for international criminal justice. In the contemporary world, particularly in the context of the ongoing armed aggression of the Russian Federation against Ukraine (2014–2025), the issue of genocide becomes particularly urgent, as such crimes have vast humanitarian, political, and legal consequences.

The importance of the study is determined by the need to analyze the challenges related to the establishment of genocide facts in the International Criminal Court (ICC). The practice of the ICC demonstrates the difficulty of proving the intent to destroy, determining the group that has suffered persecution, as well as gathering and assessing evidence that meets the high standards of international justice. At the same time, the European Court of Human Rights (ECHR) has established specific approaches to cases involving massive violations of human rights, which must be considered in the context of investigating crimes in Ukraine. The Ukrainian case is a unique example in the international legal field. The systematic actions of Russia aimed at destroying Ukrainian identity, such as mass killings, deportations, child abductions, and other forms of human rights violations, require qualification as genocide. In this context, studying the ICC's experience and applying the standards developed by the ECHR is extremely relevant for ensuring justice, strengthening the rule of law, and holding perpetrators accountable. Thus, the chosen topic is significant both for the development of international criminal law and for Ukraine's human rights practice in

the face of current challenges. It will contribute to the formation of effective approaches to documenting crimes, proving them, and ensuring the rights of the victims.

Although both the International Criminal Court (ICC) and the European Court of Human Rights (ECtHR) address serious violations of international law, their mandates and standards of proof differ substantially. The ICC focuses on the individual criminal responsibility of persons accused of core international crimes, requiring proof “beyond reasonable doubt” for conviction. In contrast, the ECtHR deals with the international responsibility of States for violations of the European Convention on Human Rights, where the evidentiary threshold is lower and primarily oriented toward establishing a pattern or systemic nature of violations rather than attributing individual guilt. This procedural distinction significantly affects the admissibility and use of evidence between the two fora.

Given the procedural and substantive differences between forums addressing individual criminal responsibility (such as the ICC) and those adjudicating State responsibility (such as the ECtHR or the International Court of Justice), an analytical focus on one type of responsibility at a time can yield greater conceptual clarity. For the purposes of this article, centring the analysis on the crime of genocide in Ukraine within the framework of individual criminal responsibility before the ICC allows for a more precise examination of evidentiary requirements, jurisdictional challenges, and procedural strategies. Comparative references to State responsibility cases, such as *Ukraine v. Russia* before the ECtHR and the ICJ, can be maintained but clearly delineated as a separate line of analysis.

The aim of the study is to define the international legal mechanisms for handling genocide cases, analyze their effectiveness, and explore the application of these mechanisms in the face of modern challenges, particularly through the lens of the Ukrainian case, as well as studying the standards developed by the European Court of Human Rights (ECHR) for their implementation into international justice practice.

To achieve this aim, the following tasks have been set:

1. To analyze the legal nature of genocide as an international crime, its definition in international law, and the specifics of proving it in the International Criminal Court (ICC).

2. To study the procedures for handling genocide cases in the ICC and assess their effectiveness in terms of ensuring justice and the rights of victims.

3. To examine the Ukrainian case in the context of the Russian Federation's armed aggression and evaluate the presence of signs of genocide according to international standards.

4. To determine the role and significance of ECHR standards in cases related to massive human rights violations and evaluate the potential for their adaptation to genocide cases.

5. To develop recommendations for improving international legal mechanisms for handling genocide cases, including within the Ukrainian context, taking into account the challenges associated with documenting and proving crimes.

The research is based on the use of a comprehensive interdisciplinary

approach that combines legal analysis, comparative law, and empirical methods (Basysta, Drozdov, Drozdova, Kovtun, & Shulhin, 2025)¹. Analysis of international legal instruments (The primary focus is on analyzing the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide (1948)², the Rome Statute of the International Criminal Court (1998)³, as well as decisions and conclusions of the UN International Law Commission⁴.) Study of ICC practice (Particular attention is given to analyzing precedents in genocide cases before the International Criminal Court⁵.) Analysis of ECtHR practice and the Ukrainian case (The research examines decisions of the European Court of Human Rights⁶ related to mass human rights violations, including deportations, abductions, and the destruction of cultural heritage. An assessment is conducted of facts and events related to Russian aggression against Ukraine (2014–2025), taking into account publications by international organizations, human rights institutions, as well as data collected by Ukrainian law enforcement agencies and independent researchers.) The application of these methods will allow for an objective assessment of international legal mechanisms for handling genocide cases, particularly in the Ukrainian context, and the development of recommendations for their improvement.

The academic literature on the adjudication of genocide cases at the ICC relies heavily on the precedents of the International Tribunals for Rwanda and the former Yugoslavia, in particular the cases of *Prosecutor v. Akayesu* (ICTR,

¹ Basysta, I., Drozdov, O., Drozdova, O., Kovtun, V., & Shulhin, S. (2025). Social and legal consequences of Ukraine's ratification of the Rome Statute of the International Criminal Court. *Social and Legal Studies*, 8(2), 262–275. <https://doi.org/10.32518/sals2.2025.262>.

² Convention on the Prevention and Punishment of the Crime of Genocide (1948). URL: <https://treaties.un.org/Doc/Publication/Unts/Volume%2078/Volume-78-I-1021-English.Pdf>

³ Rome Statute of the International Criminal Court (1998) URL: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

⁴ Reports and conclusions of the UN International Law Commission. URL: <https://legal.un.org/ilc/>

⁵ International Criminal Court. URL: <https://www.icc-cpi.int/>

⁶ European Court of Human Rights. URL: <https://www.echr.coe.int/>

1998) and *Prosecutor v. Karadžić* (ICTY, 2016), which have shaped the standards of proof of special intent (*dolus specialis*) and the criteria of mass of the crime (Schabas, Akhavan). Scholars (Ambos, Kreß) highlight the challenges of upholding the “beyond reasonable doubt” standard at the ICC, especially in the face of state non-cooperation and political pressure. In the context of Ukraine, available publications by human rights defenders (Matviychuk, Regional Center for Human Rights) and reports of international missions record deportations of children, mass executions and enforced disappearances, which could potentially qualify as genocide under the 1948 UN Convention, but most of them focus on war crimes and crimes against humanity, bypassing the procedural aspects of proving genocide in the ICC. In parallel, studies on ECHR law (Harris, O’Boyle, Warbrick) and the case law in the cases of *Janowiec v. Russia* (2013), *Catan v. Moldova and Russia* (2012) enshrine high standards for assessing evidence (“sufficiently convincing, clear and consistent”) and positive obligations of states to effectively investigate mass crimes, but their systematic comparison with the ICC procedures is almost absent, which creates a research gap, especially in the context of the war against Ukraine.

The research novelty lies in the comprehensive combination of the analysis of the problems of establishing facts in the process of considering genocide cases at the International Criminal Court, taking into account the unique context of the Ukrainian case and the standards developed by the European Court of Human Rights. The work for the first time offers a comparative approach that simultaneously takes into account the specifics of proving the crime of genocide at the international level, the challenges associated with documenting war crimes in modern armed conflicts, as well as the

practice of the ECHR in assessing evidence and protecting the rights of the parties. This approach allows us to identify gaps and contradictions between the ICC procedure and the legal standards of the ECHR, which opens up the opportunity to develop recommendations for improving the mechanisms for collecting and verifying evidence in genocide cases, in particular in the context of the war against Ukraine.

The structure of the work is constructed in such a way as to ensure logical consistency in presentation and comprehensive coverage of the researched issues. The second section provides a theoretical and legal analysis of genocide as an object of trial in international criminal law, taking into account the evolution of its legal definition, elements of the crime, and key international precedents. The third section is devoted to the Ukrainian case and contains a detailed analysis of the actions of the Russian Federation in the context of the elements of the crime of genocide in accordance with the provisions of the 1948 UN Convention and the practice of international courts. The fourth section examines the standards of establishing facts in genocide cases in the ICC and the ECHR, with an emphasis on differences in proving and assessing evidence. The fifth section highlights the key challenges of ensuring justice in genocide cases, including political, procedural, and evidentiary barriers. The sixth section examines the prospects for international justice in the context of the Ukrainian case, in particular, possible scenarios of bringing to justice and the impact on the development of international criminal law. The final seventh section contains generalized conclusions and recommendations aimed at improving the mechanisms for investigating and prosecuting the crime of genocide.

Genocide as an object of trial in international criminal law

The Convention on the Prevention and Punishment of the Crime of Genocide⁷ (hereinafter referred to as the Genocide Convention), adopted by the United Nations General Assembly on December 9, 1948, is the first international human rights treaty that established genocide as an international crime and imposed an obligation on states to prevent and prosecute it.

Article II provides the legal definition of genocide, stating that the crime includes “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such”:

1. Killing members of the group.
2. Causing serious bodily or mental harm to members of the group.
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
4. Imposing measures intended to prevent births within the group.
5. Forcibly transferring children of the group to another group.

An important addition to this definition is Article III, which establishes liability for the following acts: genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; complicity in genocide.

The Convention establishes that responsibility for committing genocide extends both to individuals and to states that fail to fulfill their obligations to prevent the crime. In the context of modern challenges and Russia’s aggression against Ukraine, these provisions of the Convention require

additional research to assess their effectiveness and adaptation to new conditions, including the Ukrainian case.

The Convention on the Prevention and Punishment of the Crime of Genocide is a foundational document in international law that establishes states’ obligations in the prevention, suppression, and punishment of genocide. Its provisions have several key characteristics:

1. Obligations under the Convention have an *erga omnes* character, meaning they are binding on all states regardless of their participation in the Convention.

2. The Convention’s participants have *erga omnes partes* obligations, meaning that each state party has a duty to ensure the enforcement of the Convention’s provisions concerning all other state parties.

3. The principles underlying the Convention belong to peremptory norms of international law (*jus cogens*).

The International Court of Justice⁸ (ICJ) is the principal body authorized to resolve disputes between States Parties concerning the interpretation, application or implementation of the provisions of the Genocide Convention. It is important to note that: The *erga omnes partes* obligations allow a state party to bring a case before the ICJ against another state party without the need to prove direct harm caused by a violation of the Convention.

All States Parties to the Convention share a common interest in preventing, suppressing, and punishing genocide. ICJ case law confirms that, in cases of failure to prevent or punish, States Parties may seek remedies through the international judicial system. While obligations under the Convention are

⁷ Convention on the Prevention and Punishment of the Crime of Genocide (1948). URL: <https://treaties.un.org/Doc/Publication/Unts/Volume%2078/Volume-78-I-1021-English.Pdf>

⁸ International Criminal Court. URL: <https://www.icc-cpi.int/>

peremptory norms with an erga omnes character, their enforcement still requires state consent to ICJ jurisdiction.

In international criminal law, genocide is one of the most serious crimes, and its consideration in court is essential to ensure justice and prevent similar crimes in the future.

Examples of court decisions on genocide: The case of *Ukraine v. Russian Federation*⁹: In February 2024, the International Court of Justice ruled on jurisdiction in a case brought by Ukraine against Russia regarding allegations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide. The Court decided that it had jurisdiction to consider whether Russia had distorted the concept of genocide, but would not determine whether Russia had actually committed genocide against Ukraine. The case of the *Republic of South Africa v. Israel*¹⁰: South Africa filed a lawsuit against Israel for violation of the Convention on the Prevention and Punishment of the Crime of Genocide. The International Court of Justice is expected to announce a decision on preliminary (provisional) measures in this case. The case of *Myanmar v. Bangladesh*¹¹: Myanmar filed a lawsuit against Bangladesh for violation of the Convention on the Prevention and Punishment of the Crime of Genocide.

ICC judgments on genocide shape international law by setting precedents for interpreting and applying the Genocide Convention and clarifying jurisdictional limits. In *Ukraine v. Russian Federation*, the Court affirmed jurisdiction over allegations of distortion of the

genocide concept but declined to rule on its actual commission.

The modern international criminal law system provides that individuals can be prosecuted for genocide crimes by international courts or national courts if they are subject to the jurisdiction of states that have relevant laws. The most important example is the International Criminal Court, which has the right to try cases of genocide committed on the territory of states parties to the Rome Statute.

One of the most debated cases in modern international law is the events related to the aggression of the Russian Federation against Ukraine. This war has resulted in significant civilian casualties, massive human rights violations, and large-scale displacement of people. An important part of this situation is the Russian Federation's denial of the existence of the Ukrainian nation and its disregard for its historical and cultural heritage. This not only calls into question the very identity of Ukraine, but also actually creates the conditions for genocide against the Ukrainian people. The violence that accompanies Russia's aggressive policy includes mass murder, torture, rape, kidnapping, the destruction of entire cities such as Kharkiv, Mariupol, and Chernihiv, as well as mass atrocities in Bucha and Irpin¹².

According to the Convention on the Prevention and Punishment of the Crime of Genocide (1948), genocidal intent - the intent to destroy in whole or in part a particular national, ethnic, racial or religious group - must be proven in order to qualify as genocide. One of the key

⁹ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*) URL: https://icj-cij.org/case/182?utm_source=chatgpt.com

¹⁰ South Africa Accuses Israel of Genocide in U.N. Court. URL: https://www.wsj.com/world/south-africa-accuses-israel-of-genocide-in-u-n-court-3af69eb7?mod=latest_headlines

¹¹ Myanmar v. Bangladesh. URL: https://www.cna.org/archive/CNA_Files/pdf/cpp-2013-u-004603-final.pdf

¹² V. Zaplatynskyi, *The Ukrainian-Russian War - Causes, Prospects and Lessons*, *Kultura Bezpieczeństwa* 2022, no. 41 (numer specjalny), s. 33-42, DOI 10.5604/01.3001.0015.8487

pieces of evidence is the mass murder of Ukrainian citizens.

According to the International Criminal Court (ICC), the UN and independent human rights organizations, the destruction of civilians was systematic. The Bucha massacre (March-April 2022) - according to the UN, more than 450 civilians were killed, many of whom showed signs of torture and execution. The Mariupol tragedy – shelling of civilian infrastructure, including the Drama Theater, where at least 600 people hiding from the bombing were killed¹³.

This violates Article 2(e) of the Genocide Convention, which prohibits the forcible transfer of children from one ethnic group to another. Decision of the International Criminal Court (March 2023): The ICC issued an arrest warrant for Vladimir Putin and Maria Lvova-Belova (Russian Commissioner for Children's Affairs¹⁴) for the illegal deportation of Ukrainian children. Accordingly, understanding the depth of the existing challenges and threats to children and their lives, that is, realizing the wide range of issues that have not been properly resolved, the Council of Europe has had its Special Envoy on the Situation of Children in Ukraine since February 2025¹⁵.

A key aspect of proving genocidal intent is public statements by Russian officials and state media. An article in RIA Novosti (April 2022) called

for the “denazification” of Ukraine, which includes the physical destruction of the “guilty part of the population.”¹⁶

Speeches by Russian politicians: Dmitry Medvedev, Vyacheslav Volodin, and others have repeatedly denied the right of Ukrainians to exist as a separate nation. In February 2022, Ukraine filed a lawsuit against Russia with the International Court of Justice, claiming that Russia had abused the concept of genocide to justify its aggression. In March 2022, the court issued an interim ruling ordering Russia to cease hostilities, but Russia ignored it¹⁷. Some countries (including Germany, Lithuania, and Poland) have opened criminal cases against Russia based on the principle of universal jurisdiction, which allows for the prosecution of war crimes regardless of where they were committed.

Political recognition of the genocide committed by Russia against Ukrainians has already been granted by a number of international institutions, including the Verkhovna Rada of Ukraine and the parliamentary bodies of a number of European and North American countries. Former Ukrainian Foreign Minister Dmytro Kuleba recently noted in his video address at the International Law Against Genocide conference that Ukraine is actively working to bring Russian criminals to justice for committing genocide¹⁸.

One of the main challenges in genocide proceedings is the difficulty of

¹³ Submission to the Office of the Prosecutor of the International Criminal Court on the crime of genocide allegedly committed in Mariupol between February 24 and May 20 2022 / NGO “Kharkiv Human Rights Protection Group.” – Kharkiv: Human Rights Publishing House LLC, 2023. 100 p.

¹⁴ Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. URL: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

¹⁵ Ivanna Kostina The Council of Europe has appointed a special envoy of the Secretary General of the Council of Europe on the situation of children in Ukraine. 02/05/2025. <https://www.eurointegration.com.ua/news/2025/02/5/7204250/>

¹⁶ Article by propagandist Timofey Sergeev “What Russia should do with Ukraine”. URL: <https://holodomormuseum.org.ua/propaganda/stattia-propahandysta-tymofii-serhejtseva-shcho-rosiia-maie-zrobyty-z-ukrainoiu/>

¹⁷ UN Court rejects Russia's objections and takes up Putin's “genocide in Donbas” case. URL: <https://www.bbc.com/ukrainian/articles/cgrlv213yq0o>

¹⁸ Dmytro Kuleba at the UN Security Council: By joint and decisive actions we can put the aggressor in his place and restore international peace and security. URL: <https://mfa.gov.ua/news/dmitro-kuleba-v-radbezi-oon-spilnimi-ta-rishuchimi-diyami-mi-mozhemo-postaviti-agresora-na-misce-ta-vidnoviti-mizhnarodnij-mir-ta-bezpeku>

gathering and presenting evidence. Genocide is usually part of large-scale violent acts that take place in a context of war or political instability, which makes it difficult to access the necessary evidence. In international law, specific elements must be proven to qualify an action as genocide:

- Genocide implies a specific intent to destroy a certain group of people.
- Proving mass killings, torture, sexual violence, deportations, and other forms of violence is difficult because of the difficulty in gathering testimony and physical evidence.
- Collecting evidence often requires cooperation between states, international organizations and human rights institutions.

In my opinion... in the case of Ukraine, the key evidence may be: Official statements by Russian politicians justifying the destruction of Ukrainians as a nation (articles, speeches, interviews, including Putin's article on the "unity of Russians and Ukrainians" and calls by Solovyov, Medvedev, Kadyrov). Documents confirming orders to destroy Ukrainian identity, such as the deportation of children, and the ban on the Ukrainian language and culture in the occupied territories. Reports by the UN and human rights organizations (Human Rights Watch, Amnesty International) on mass killings, rape and torture of civilians in Bucha, Mariupol, Izyum, Kherson. Satellite intelligence data on mass graves and filtration camps. Forced deportation of Ukrainian children and their "re-

education" in the Russian Federation, which is a clear violation of the 1948 Genocide Convention. The selective destruction of intellectuals, cultural figures, military veterans, and civic activists in the occupied territories¹⁹.

At the same time, we note disappointing trends, such as the termination of funding and the curtailment of the program to investigate the abduction of Ukrainian children by Russia, which was once again confirmed by the United States at the official level on March 28, 2025. «No, the program we're not – the program is not funded. It was part of the reductions that were made, but we secured the data and we've ensured that we have it and it can be transferred to any appropriate authorities, and we'll issue a congressional – I don't know if it's a notification or just responses to the letters they've written us»²⁰. This is about curtailing the work of experts from Yale University who were collecting data on the deportation of Ukrainian children to Russia, as a result of which several hundred children have already been returned to Ukraine. "This is the largest search group (Yale HRL), which analyzed information, including satellite imagery, social media, and media publications. They tracked approximately 35,000 children taken away by Russia. They also monitored 116 facilities in the Russian Federation."²¹. As a result, they are talking about the loss of the collected evidence and the inability to transfer it to the ICC.²², and about allocating short-term funding for data transfer²³.

¹⁹ REZOLYUTSIYA «Viyina v Ukraini ta yiyi ekonomichni, sotsial'ni ta ekolohichni naslidky» Yevropeys'kyy ekonomichnyy i sotsial'nyy komitet (EESC) [RESOLUTION "The war in Ukraine and its economic, social and environmental consequences" European Economic and Social Committee (EESC)]. URL: <http://federation.org.ua/podiitafakti/evropeiskii-ekonomichnii-i-sotsialnii-komiteteesk-zatverdiv-rezolyutsiyu-v-yakii-rishu>

²⁰ Secretary of State Marco Rubio Remarks to the Press. 28.03.2025. <https://www.state.gov/secretary-of-state-marco-rubio-remarks-to-the-press-3/>

²¹ How the US "deletes evidence" of Russia's abduction of Ukrainian children. 19.03.2025. <https://www.bbc.com/ukrainian/articles/cy4ley7d8pno>

²² How the US is "deleting evidence" of Russia's abduction of Ukrainian children. 19.03.2025. <https://www.bbc.com/ukrainian/articles/cy4ley7d8pno>

²³ Maryna Boryspolets THE USA WILL ALLOCATE SHORT-TERM FUNDING FOR THE TRANSFER OF DATA ON KIDNAPPED UKRAINIAN CHILDREN BEFORE THE CLOSURE OF THE PROJECT. 28.03.2025. [HTTPS://SOCPORTAL.INFO/UA/NEWS/SSHA-VIDILYAT-KOROTKOSTROKOVE-FINANSUVANNYA-DLYA-PEREDANNYA-DANIKH-PRO-VIKRADENIKH-](https://socportal.info/ua/news/ssha-vidilyat-korotkostrokovye-finansuvannya-dlya-peredannya-danikh-pro-vikradenikh-)

Political factors can play a role in several ways:

- Many international genocide trials are delayed or even prevented due to a lack of political will in key countries, or due to their political interests.

- In international trials, it is often the case that countries in political alliances try to avoid prosecution for their allies.

- In international genocide cases, there is sometimes manipulation of the facts by states trying to influence the course of the process through lobbying, control of information, and pressure on witnesses.

- In some cases, the term "genocide" can be used as a political tool to discredit a particular country or government.

Historical and legal practice shows that serious international crimes, including genocide, often remain unpunished. Christina Lamb, who has worked in conflict zones for over thirty years, describes atrocities in Berestyanka, Bohdanivka, Kherson region, Syria, Iraq, Afghanistan, Bosnia and Herzegovina, the DRC, Nigeria, Rwanda, Burma etc. The

author emphasizes that despite the fact that rape and sexual violence were still recognized as genocide «just like any other act, if they were committed with the specific intention to destroy, in whole or in part, a specific group that is a target by the fact of its existence»²⁴, but, unfortunately, "since the time of Akayesu, the situation has not progressed in any direction. Although this case has entered the history of law, it has hardly helped women in conflict situations"²⁵.

So, International law provides a clear definition of genocide, but its application in practice is sometimes complicated by political factors. To qualify an action as genocide, it is necessary to consider not only the facts but also the intentions of the parties to the conflict. Also, genocidal intent must be traced over long periods, and there are enough Ukrainian historical examples for this, as we have already discussed²⁶ and other authors²⁷. It has already been mentioned a length. Political interests may influence how this intent is interpreted in court proceedings.

UKRAINSKIKH-DITEI-PERED-ZAKRITYAM-PROEKTU/

²⁴ Lamb Christina Our bodies are their battlefield. Kyiv: Publishing house, 2024. P.150 (368 p.)

²⁵ Lamb Christina Our bodies are their battlefield. Kyiv: Publishing house, 2024. P. 359.

²⁶ Basista I.V. The forced transfer of Ukrainian children - an act of genocide or a war crime? Ukrainian military and post-war criminal justice: materials of the IX (XXII) Lviv Forum of Criminal Justice (Lviv, October 26–27, 2023) / compiled by I. B. Gazdaika-Vasilyshyn. Lviv: Lviv State Department of Internal Affairs, 2023. pp. 18-64.

<https://www.lvduvs.edu.ua/uk/library/materialy-naukovykh-konferentsii.html>

[file:///C:/Users/Ірина%20Володимирівна/Downloads/26-27_10_2023%20\(7\).pdf](file:///C:/Users/Ірина%20Володимирівна/Downloads/26-27_10_2023%20(7).pdf)

Basista I.V. Prospects for responsibility for illegal deportation and illegal movement of Ukrainian children (cooperation with the International Criminal Court) (continued review). International scientific and practical conference "State policy on combating human trafficking and illegal migration: Ukraine and the world". (Lviv, June 9, 2023). Lviv: Lviv State University of Internal Affairs, 2023. P. 35-43. <https://www.lvduvs.edu.ua/uk/library/materialy-naukovykh-konferentsii.html>

Basista I.V. Criminal liability for genocide under the current Criminal Code of Ukraine: individual problems. Procedural and

forensic support of pre-trial investigation: abstracts of reports of participants of the scientific and practical seminar (December 1, 2023) / ed. A.Ya. Khytra. Lviv: Lviv State Internal Affairs Department. 2023. P. 10-17. <https://www.lvduvs.edu.ua/uk/library/materialy-naukovykh-konferentsii.html>

Basista I.V. Bringing the International Criminal Court to Accountability for International Crimes Committed and Committed in Ukraine, Including Against Children (Continuation of the Review). Transcarpathian Legal Readings. Law as an Instrument of Stability and Development in the Face of Modern Civilizational Challenges: Materials of the 15th International Scientific and Practical Conference, Uzhhorod, April 27, 2023. Part I. Lviv-Torun: Liha-Press, 2023. P.12-18. DOI <https://doi.org/10.36059/978-966-397-298-5-1>

<http://catalog.liha-pres.eu/index.php/liha-pres/catalog/view/193/3962/9374-1>

²⁷ Shepitko V. Yu. Soviet and post-Soviet genocide of Ukrainians in the 20th and 21st centuries: establishing facts and problems of investigation. Genocide in Ukraine: problems of proof and punishment: materials of the international scientific-practical round table, Kharkiv, December 17, 2024. Research Institute for the Study of Crime Problems named after Acad. V.V. Stashys, National Academy of Sciences of Ukraine; V.M. Koretsky Institute of State and Law, National Academy of Sciences of Ukraine. Kharkiv: Pravo, 2024. P. 86-92. DOI: <https://doi.org/10.31359/9786178518677>

According to researchers, it is also important to distinguish between genocide tragedies that have left severe consequences on a global scale. The most significant examples are:

- Genocide in Yugoslavia²⁸ (1991-1995): The armed conflict in the Balkans led to mass killings and ethnic cleansing. The Special Tribunal for the Former Yugoslavia (ICTY) was the first international court to investigate and prosecute individuals for genocide crimes, including the cases of Srebrenica, where more than 8,000 Muslim men and boys were killed by the Serbian military.

- Genocide in Rwanda (1994)²⁹: The massacre of more than 800,000 Tutsis and moderate Hutus in 100 days was a catastrophe that attracted the attention of the international community. The International Criminal Tribunal for Rwanda (ICTR) investigated and convicted those involved in this genocide, including crimes against humanity and genocide.

- Genocide in Sierra Leone³⁰ (1996-2002): A war that left thousands dead led to the establishment of the Special Court for Sierra Leone. The courts aimed to bring to justice those responsible for war crimes and genocide, including torture, slavery, and murder.

These examples demonstrate how international courts and tribunals have contributed to the prosecution of genocide perpetrators, but not all cases have been successful. The lack of legal mechanisms and political will in many cases limited the effectiveness of justice.

The 1948 UN Genocide Convention recognized genocide as a distinct crime but did not directly assign state responsibility, providing only that disputes be referred to the ICJ (Art. IX). The 1998 Rome Statute gave the ICC

jurisdiction to prosecute genocide, yet the Court faces significant challenges limiting its effective response.

The ICC investigates and prosecutes those responsible for genocide, but its jurisdiction is limited by several factors:

- The ICC has jurisdiction only in countries that are states parties to the Rome Statute or when a situation is referred to the ICC by the UN Security Council.

- The ICC often faces difficulties in arresting persons outside the court's jurisdiction. Such situations have been documented in genocide cases, where the accused remain fugitives, having escaped justice.

- The ICC is often subject to political pressure from countries that do not want their leaders or officials to be subjected to judicial investigation. In addition, the court faces funding and resource constraints that make it difficult to fulfill its mission.

Precedents such as the Rajab Sekho (Rwanda), Ratko Mladić (Yugoslavia), and other genocide trials show that even with strong evidence and political backing, proceedings can be delayed or influenced. The ICC's role in combating genocide is crucial, yet its effectiveness is limited by the non-ratification of the Rome Statute by key states (e.g., the US, China, India) and ambiguities in proving intent and scope. These experiences highlight the need to strengthen international mechanisms and secure broader political support for enforcing international criminal justice.

An important institutional actor in documenting international crimes in Ukraine is the International Commission of Inquiry on Ukraine, established by the UN Human Rights Council in March 2022.

²⁸ Genocide in Yugoslavia. URL: <https://hml.org/library/research/genocide-in-bosnia-guide/>

²⁹ Genocide in Rwanda. URL: <https://www.britannica.com/event/Rwanda-genocide-of-1994>

³⁰ Genocide in Sierra Leone. URL: <https://www.refworld.org/reference/countryrep/amnesty/1995/en/40123>

The Commission's mandate covers the investigation of violations of human rights and international humanitarian law, including potential acts of genocide, committed in the context of the armed aggression against Ukraine. Its reports, based on victim and witness testimonies, satellite imagery, and forensic analysis, provide a consolidated factual basis that can inform proceedings before both international and national courts, though procedural adaptation is required for admissibility in ICC trials (OHCHR, 2025).

The Joint Investigation Team (JIT) on Ukraine, established under the

auspices of Eurojust and involving Ukraine alongside several EU Member States, plays a pivotal role in facilitating the exchange of evidence and coordination of investigative activities relating to core international crimes committed on Ukrainian territory. The JIT ensures the harmonisation of investigative methodologies, reduces duplication of efforts, and enables real-time sharing of forensic data, witness statements, and digital evidence with both national prosecutors and the ICC Office of the Prosecutor (Eurojust, 2024).

Ukrainian case: analysis of Russia's actions in the context of the crime of genocide

Since the beginning of Viktor Yanukovich's presidency, relations between Russia and Ukraine have been tense and have lasted for almost 10 years. Russia has made territorial claims, believing that Ukrainian lands are part of Russia. This was confirmed by the beginning of Russia's full-scale aggression against Ukraine on February 24, 2022.

Political differences between Ukraine and Russia began immediately after Ukraine gained independence in 1991. Ukraine chose the course of European integration and sought cooperation with the European Union and NATO, which caused dissatisfaction in the Kremlin. The first cracks in the relationship appeared after Ukraine gave up its nuclear arsenal, which significantly weakened its position in the face of Russia, which began blackmailing Ukraine over gas issues. One of Russia's first serious attempts to change the borders was in 2003, when Russia began construction of a dam in the Kerch Strait³¹.

This was a prelude to the political changes that took place in Ukraine after the Orange Revolution of 2004, which brought pro-Western President Viktor Yushchenko to power. However, Ukraine never joined the EU, and Russia continued to influence its domestic politics³².

The turning point in the relationship was when Russia cut off gas supplies in 2006-2009, which was used as a blackmail tool. In 2008, when Ukraine declared its intention to join NATO, Russia strongly opposed it, claiming that Ukraine was part of its influence zone.

Confrontation between Russia and Ukraine grew, and in 2013, President Yanukovich's refusal to sign an association agreement with the EU led to mass protests in Ukraine, which became the basis for the outbreak of war in Crimea and Donbas. Russia launched its armed aggression against Ukraine in 2014, annexing the Autonomous Republic of Crimea and supporting the creation of illegitimate separatist entities in eastern Ukraine. In response to these actions,

³¹ Kosa Tuzla Island: how Russia started a hybrid war against Ukraine 20 years ago. URL: <https://armyinform.com.ua/2023/09/28/ostriv-kosa-tuzla-yak-rosiya-pochala-gibrydnu-vijnu-proty-ukrayiny-20-rokiv-tomu/>

³² "It was supposed to be honey". Why the revolution in Ukraine was orange 20 years ago. URL: <https://www.bbc.com/ukrainian/articles/c4g2l67gwkw0>

Ukraine has been actively defending its sovereign rights at the international level, in particular by applying to the European Court of Human Rights (ECHR). An important milestone in the legal qualification of Russia's criminal actions was the ECHR judgment in the case of *Ukraine v. Russia on Crimea*, adopted on June 25, 2024³³.

In a decision adopted in 2024, the ECtHR officially recognized Russia as responsible for large-scale and systemic human rights violations in the occupied territory. In particular, the Court found that: (1) the application of Russian legislation in Crimea, (2) the functioning of judicial bodies controlled by the Russian authorities, and (3) the forced change of citizenship of the peninsula's residents were illegal.

This decision is of particular historical significance, as it is the first time that an international court has recognized the illegality of the annexation of Crimea, which refuted the Russian authorities' propaganda narrative about the "legal annexation" of the territory. It is worth noting that back in January 2021, in its decision on the admissibility of this case, the ECtHR concluded that there was a clear lack of legal basis for the so-called "referendum" in Crimea and confirmed the systematic human rights violations by the occupation administration.

The next important step in establishing responsibility for the destabilization of Ukraine was the ECHR judgment in the case of *Vyacheslavova and Others v. Ukraine*³⁴, adopted in March 2025, which concerned the tragic events in Odesa on May 2, 2014. The court analyzed the circumstances of the events and made several key conclusions that are important for understanding Russia's influence on

the domestic political situation in Ukraine. Firstly, the ECtHR established the significant role of Russian disinformation in inciting mass unrest and provoking social tension. Secondly, the Court confirmed that key officials responsible for the inadequate response to these events had fled to Russia and obtained Russian citizenship, which indicates their connection with Russian state structures. Thirdly, the Court found no evidence of bias in the investigation by the Ukrainian authorities, which refutes the Russian propaganda's allegations of "political persecution."

Specific actions of the Russian Federation in Ukraine that may qualify as genocide include the killing of civilians, deportation of the population and destruction of cultural heritage, which bear the hallmarks of a systematic policy aimed at destroying Ukrainian national, ethnic and cultural identity.

Russian troops have been carrying out mass killings of civilians, in particular in cities such as Bucha, Irpin, and Mariupol, where numerous cases of extrajudicial killings have been reported³⁵.

During the occupation of Bucha, Kyiv region, from March 3 to April 1, 2022, the Russian military committed mass killings of civilians. According to the Office of the Prosecutor General of Ukraine, as of March 2024, more than 20,000 war crimes in the Kyiv region have been documented, 13,000 of them during the occupation. In Bucha, 146 people involved in these crimes were notified of suspicion, and indictments against 89 people were sent to court. Specialists from the Office of the United Nations High Commissioner for Human Rights (OHCHR) described in detail the shooting of 73 people in Bucha: 54 men, 16 women,

³³ *Ukraine v. Russia on Crimea*. URL: <https://hudoc.echr.coe.int/eng?i=002-14347>

³⁴ *Vyacheslavova and Others v. Ukraine*. URL: <https://hudoc.echr.coe.int/eng?i=001-242505>.

³⁵ Civil society and media losses in three years of Russia's full-scale invasion of Ukraine (2022–2024): report-memorial / V. Naydionova, T. Pechonchyk, D. Popkov, L. Tiahnyriadno, L. Yankina; ed.: T. Bezruk, T. Pechonchyk; Human Rights Centre ZMINA. Kyiv, 2024. 72 P

two boys and one girl, and continue to work to confirm 105 more cases of killings. In Mariupol, Donetsk region, Russian armed forces have carried out mass killings of civilians since March 2022. According to local authorities, the number of civilians killed exceeds 20,000. These actions included shelling of residential areas, hospitals and shelters, resulting in significant civilian casualties and destruction of the city's infrastructure³⁶.

The forced transfer of Ukrainian children to Russia is one of the most disturbing components of Russia's policy, which has long violated numerous international norms, which has been discussed many times³⁷. This is a far-sighted genocidal policy of Russia to change the identity of Ukrainian children, who are illegally moved by the occupying

country to its and Belarusian territories. The number of Ukrainian children abducted in this way is not known for certain (according to approximate official data, it is over 20,000 children and this figure is only growing, because the illegal movement of children continues)³⁸. Although, as the expert of the Regional Center for Human Rights noted, the statistical data actually remain within the same limits³⁹. The director of the Yale Humanities Research Laboratory announced the figure of over 30 thousand deported children, and the Regional Human Rights Center refers to it⁴⁰. Ombudsman stressed the "high risk" of deportation by Russians of another 1.5 million Ukrainian children⁴¹), but the genocidal intent of such activities is obvious. This is confirmed by numerous publications, including those with

³⁶ Over 133 thousand Russian war crimes documented in Ukraine. URL: <https://armyinform.com.ua/2024/05/30/v-ukrayini-zadokumentuvaly-ponad-133-tysyachi-voyennyh-zlochyniv-rosiyi/>

³⁷ Basista I. V., Savyuk O. V. CRIMES AGAINST UKRAINIAN CHILDREN COMMITTED BY THE AGGRESSOR COUNTRY. War in Ukraine: conclusions drawn and lessons not learned: collection of abstracts of the International Scientific and Practical Conference (February 21, 2025). Lviv: Lviv State University of Internal Affairs, 2025. P.47-

49.file:///C:/Users/Ірина%20Володимирівна/Downloads/21_02_2025.pdf

Basysta I. V., Nazar Yu. S., Khatniuk Yu. A. PROTECTING THE RIGHTS OF CHILDREN AND ENSURING THEIR SAFETY IN THE CONTEXT OF WAR CRIMES, GENOCIDE, AGGRESSION AND CRIMES AGAINST HUMANITY. Juvenile policy as a component of supporting Ukraine's national security and defense (dedicated to the 53rd anniversary of the UN General Assembly adoption of the Declaration of the Rights of the Child and the 56th anniversary of the establishment of Dnipropetrovsk State University of Internal Affairs): Scientific monograph. Riga, Latvia : «Baltija Publishing», 2023. P. 42-78. 552. <http://baltijapublishing.lv/omp/index.php/bp/catalog/view/287/7881/16459-1>

<https://doi.org/10.30525/978-9934-26-276-0-2>

Basysta I. V., Vlasova H. P., Stratonov V. M. Prospects and inevitability of responsibility for committing war crimes, genocide, aggression and crimes against humanity (activities of the Joint Investigative Group for the Investigation of Serious International Crimes in Ukraine (JIT); cooperation with the International Criminal Court; prospects for the creation of an International ad hoc tribunal, etc.) (continued review). Military offences and war crimes: background, theory and practice : collective monograph. Ed. by V.M. Stratonov. Riga, Latvia : «Baltija Publishing», 2023. 25-72. (876 p). <http://baltijapublishing.lv/omp/index.php/bp/catalog/book/322> DOI <https://doi.org/10.30525/978-9934-26-302-6-2>

³⁸ During the summer, the Russians took over 3,000 children from the occupied Kherson region for "re-education," Lubinets said. 11.01.2025. <https://rubryka.com/2025/01/11/protyagom-lita-na-perevyhovannya-rosiyany-vyvezly-ponad-3-tysyachi-ditej-z-okupovanoyi-hersonshhyny-lubinets/>

³⁹ THE OFFICIAL NUMBER OF DEPORTED CHILDREN HAS NOT CHANGED FOR TWO YEARS, DURING WHICH RUSSIA CONTINUES TO KIDNAPPING THEM — EXPERT. 28.03.2025.

[HTTPS://ZN.UA/UKR/UKRAINE/OFITSIJNA-KILKIST-DEPORTOVANIKH-DITEJ-NE-ZMINJUVALASJA-VZHE-DVA-ROKI-PROTJAHOM-JAKIKH-ROSIJA-PRODOVZHUALA-JIKH-VIKRADATI-EKSPERT.HTML](https://zn.ua/UKR/UKRAINE/OFITSIJNA-KILKIST-DEPORTOVANIKH-DITEJ-NE-ZMINJUVALASJA-VZHE-DVA-ROKI-PROTJAHOM-JAKIKH-ROSIJA-PRODOVZHUALA-JIKH-VIKRADATI-EKSPERT.HTML)

⁴⁰ THE OFFICIAL NUMBER OF DEPORTED CHILDREN HAS NOT CHANGED FOR TWO YEARS, DURING WHICH RUSSIA CONTINUES TO KIDNAPPING THEM — EXPERT.. 28.03.2025.

[HTTPS://ZN.UA/UKR/UKRAINE/OFITSIJNA-KILKIST-DEPORTOVANIKH-DITEJ-NE-ZMINJUVALASJA-VZHE-DVA-ROKI-PROTJAHOM-JAKIKH-ROSIJA-PRODOVZHUALA-JIKH-VIKRADATI-EKSPERT.HTML](https://zn.ua/UKR/UKRAINE/OFITSIJNA-KILKIST-DEPORTOVANIKH-DITEJ-NE-ZMINJUVALASJA-VZHE-DVA-ROKI-PROTJAHOM-JAKIKH-ROSIJA-PRODOVZHUALA-JIKH-VIKRADATI-EKSPERT.HTML)

⁴¹ The Ombudsman stated that there is a "high risk" of another 1.5 million Ukrainian children being deported by the Russians. 2.10.2024.

<https://www.slovoidilo.ua/2024/10/02/novyna/bezpeka/ombudsmen-zayavyv-pro-vysokyj-ryzyk-deportacziyirosiyanamy-shhe-15-miljona-ukrayinskyh-ditej>

Karina Prykhodko The occupiers are preparing to take thousands of children to the Russian Federation - details from the Central Intelligence Agency 8.01.2025. <https://armiya.novyny.live/okupanti-gotuiutsia-vivezti-v-rf-tisiachi-ditei-detali-vid-tsns-225118.htm>

references to materials from the Institute for the Study of War (ISW), which state that since the beginning of Russia's aggression, the invaders have been "reprogramming" children regarding their attitude to Russia's war against Ukraine, i.e., in this way, national identity is changing. "The Russian authorities have developed a whole system of "re-education" of children abducted from Ukraine, trying to form a "Russian identity" in them, and the Russian Ministry of "Education" is the main agency responsible for the "indoctrination" of deported Ukrainian children."⁴² The occupiers are erasing the national identity of young Ukrainians and raising soldiers to eventually send them to war against their own Motherland, Ukraine⁴³.

The Russian authorities are actively changing their legislation to expedite the granting of Russian citizenship to deported children. This includes a simplified procedure for obtaining Russian citizenship for persons under the age of 18, which effectively leads to forced Russification. For example, in 2022, Russia passed a law allowing automatic granting of citizenship to children without the need to go through the usual procedures applicable to adults⁴⁴.

One of the most well-known examples is the story of children from Mariupol, where, according to human rights organizations, more than 3,000

children were taken to Russia through so-called "filtration camps" and forcibly placed in different regions of Russia, often without the consent of their parents or relatives. According to Ukrainian sources, some of these children were placed in special orphanages where they were raised under Russian patriotic influence, without the possibility of returning home⁴⁵.

The deliberate destruction of cultural heritage in Ukraine is not only vandalism but also part of a strategy to erase Ukrainian national and cultural identity, qualifying as an element of genocide. Since the war began, Russia has actively shelled and destroyed historical and cultural monuments. According to the Ministry of Culture and Information Policy of Ukraine, by the end of 2023, more than 1,200 cultural heritage sites were damaged or destroyed, including museums, libraries, theaters, and churches. Notable cases include the destruction of the Hryhorii Skovoroda Museum in Skovorodynivka, an important part of Ukrainian heritage, and the Museum of Ukrainian Literature in Mariupol, which contained a collection documenting Ukrainian cultural history. Many churches and monasteries were also severely damaged, including the Holy Dormition Cathedral in Kharkiv and numerous places of worship in Donetsk and Luhansk.

The destruction of cultural monuments is accompanied by a policy of

⁴² Yuriy Bratyuk The media learned how the Kremlin is Russifying kidnapped Ukrainian children. zaxid.net 11.03.2024. https://zaxid.net/zmi_diznalisya_yak_kreml_rusifikuye_vikrad_enih_ukrayinskih_ditey_n1581498

⁴³ "Cadet classes" and "hero parties": how Russians militarize Ukrainian children in the occupied territories. 3.04.2024. <https://sprotyv.info/obshchestvo/kadetski-klasi-ta-parti-geroiv-yak-rosiyani-militarizuyut-ukrayinskihditej-na-okupovanih-teritoriyah/>

Olena Yarema At the TOT of Luhansk region, students' entry into the Kremlin's "Movement of the First" will become mandatory. November 10, 2024. <https://detector.media/infospace/article/234531/2024-11-10-na-tot-luganshchyny-vstup-studentiv-dokremliivskogo-rukhu-pershykh-stane-obovyazkovym/> "Brainwashing" children: occupiers create "war museums" in schools. 5.01.2024. <https://flot2017.com/promyvaiut-mizky-ditiam-okupanty-stvoriut-voienni-muzei-u-shkolakh/>

Natalia Dzhuma Russians are building a network of "Youth Houses" in the occupied territories to "brainwash" Ukrainian teenagers, - Center of National Resistance. CENSOR.NET. 16.01.2024. https://censor.net/ua/news/3467929/rosiyany_rozbudovuyut_mereju_budynkiv_molodi_na_okupovanyh_terytoriyah_dlya_promyvanny_mizkiv_ukrayinskym

Russians in the occupied territories are going around children's sections and looking for informants among teenagers, - Center of National Resistance. <https://censor.net/ua/n3467929>

⁴⁴ Putin wants to issue passports in the occupation within 10 days. And he demands an oath of allegiance. URL: <https://www.rbc.ua/rus/news/putin-hoche-vidavati-pasporti-okupatsiyi-1672071869.html>

⁴⁵ Tým autorů C91 Moderní aspekty vědy: XX. Díl mezinárodní kolektivní monografie / Mezinárodní Ekonomický Institut s.r.o.. Česká republika: Mezinárodní Ekonomický Institut s.r.o., 2022. str. 624

banning the Ukrainian language and history in the occupied territories. The Russian authorities prohibit the teaching of the Ukrainian language, destroy textbooks on the Ukrainian language and literature, replacing them with Russian analogues, which contributes to the imposition of Russian propaganda. In the occupied territories, “educational reforms” are being actively carried out, as part of which Ukrainian schools are being closed and Russian educational institutions are being opened in their place, where only the Russian language, history and culture are taught⁴⁶.

Forced passportization, which Russia is actively pursuing in the occupied territories, is another tool of Russification and forced assimilation. According to the Ukrainian authorities, more than 700,000 people have been granted Russian citizenship in the temporarily occupied territories of Luhansk and Donetsk oblasts, as well as in Crimea.

Targeted attacks on civilian infrastructure by the Russian Federation are part of a strategy aimed at maximizing the suffering of civilians and creating conditions that endanger their existence. One of the most tragic events was the massive rocket bombardment of Dnipro in January 2023, which damaged residential buildings on Peremohy Street. Other cities, such as Kramatorsk, Vinnytsia, Kharkiv, and Mariupol, also came under rocket attacks that destroyed residential areas and social infrastructure, causing huge civilian casualties.

In addition, massive attacks on Ukraine's energy infrastructure, including thermal power plants (TPPs) and hydroelectric power plants (HPPs), became one of the most notorious acts of

aggression by Russia in 2022-2023. During the winter period of 2022-2023, Russia launched a series of missile attacks on energy facilities, which led to massive disruptions in the supply of electricity, water and heat⁴⁷.

Ukrainian and international human rights organizations are actively collecting testimonies from survivors of violent acts (rape, murder, torture, deportation). Documenting war crimes through photographs and videos is an important method of proof. Together with international organizations, Ukraine uses satellite imagery to identify the destruction of cities, villages, and infrastructure, as well as to record the movement of military forces and the accumulation of equipment in the area that was under fire.

One of the important aspects of documentation is the exhumation of victims' bodies. For example, after the liberation of Bucha, mass graves were discovered that proved extrajudicial killings.

Ukraine has filed a request with the ICC to investigate alleged war crimes and crimes against humanity committed by the Russian Federation on the territory of Ukraine. Since 2014, the ICC has opened a preliminary investigation, which was expanded after the start of full-scale aggression in 2022. Ukrainian investigators are cooperating with the ICC by providing documents and testimonies. Ukrainian human rights organizations, such as the ZMINA Human Rights Center⁴⁸ and the Ukrainian Helsinki Human Rights Union⁴⁹, are actively documenting war crimes and genocide, maintaining a register of human rights violations, and cooperating with

⁴⁶ The impact of the Russian-Ukrainian conflict on global food security and related issues within the Food and Agriculture Organization of the United Nations (FAO). URL: <https://www.fao.org/3/nj164fr/nj164fr.pdf>

⁴⁷ Report on direct damage to infrastructure from the destruction caused by Russia's military aggression against

Ukraine as of the beginning of 2024 URL: https://kse.ua/wp-content/uploads/2024/04/01.01.24_Damages_Report.pdf

⁴⁸ “ZMINA Human Rights Center” URL: <https://zmina.ua/>

⁴⁹ Ukrainian Helsinki Human Rights Union” URL: <https://www.helsinki.org.ua/>

international bodies to bring perpetrators to justice.

As noted by Drozdov, Lishchyna, Drozdova, and Kovtun (2025), the establishment of a Special Tribunal on the Crime of Aggression against Ukraine is viewed not only as a tool for prosecuting the highest political and military leadership of Russia but also as a potential catalyst for enhancing ICC and national investigations into war crimes, crimes against humanity, and genocide⁵⁰.

To date, the ICC has issued no genocide convictions. In the Ukraine situation, its investigation focuses on alleged war crimes and crimes against humanity, while genocide remains under preliminary analysis.

One of the main legal challenges for submitting evidence to the ICC is the limited access to the areas where crimes are committed. In the context of occupation or military conflict, serious legal difficulties arise in collecting evidence, as restrictions on free access to these territories may be imposed by the

aggressor itself or due to security concerns. To overcome this challenge, remote surveillance methods, such as satellite imagery, are used, as well as technologies for remote evidence collection, such as video communication with victims.

Evidence collection in wartime often faces issues of authenticity. This includes photographs, videos, testimonies, and documents that may be forged or distorted. It is important to prove that the evidence is authentic and has not been altered or distorted. The ICC requires clear verification of evidence through specialized methods, such as digital signatures, metadata, or expert opinions on technical authenticity (such as for videos or images). Military units often have their own information about combat operations that can be an important source of evidence for the ICC, such as intelligence data or operational reports. However, such documents may be closed, secret, or not subject to public disclosure.

Standards of fact-finding in genocide cases at the ICC and the ECHR

The fact-finding process is an important stage in the proceedings of the International Criminal Court (ICC). The collection and evaluation of evidence is based on strict international legal standards that ensure fairness and accuracy of justice. Fact-finding is essential for the qualification of crimes related to war crimes, crimes against humanity and genocide.

The ICC applies high standards of proof, incorporating principles set out in international criminal law, including:

- Presumption of innocence. The accused is presumed innocent until proven guilty in a court of law.
- Standard of proof “beyond reasonable doubt”. Guilt must be proven beyond reasonable doubt, excluding any alternative interpretation.
- Admissibility of evidence. Evidence accepted by the court must be obtained within the framework of international law, respecting human rights requirements.
- Materiality and nexus with the charge. Evidence must be direct and relevant to the facts relevant to the case⁵¹.

⁵⁰ Drozdov, O., Lishchyna, I., Drozdova, O. and Kovtun, V., 2025. The Special Tribunal for the Crime of Aggression Against Ukraine: Jurisdictional challenges and international legal response in the context of ECtHR case law. *Pravo Ukrainy (Law of Ukraine)*, 5, pp.9–42. URL: https://www.academia.edu/143363604/Drozdov_O_Lishchyna_I_Drozdova_O_and_Kovtun_V_2025_The_Special_Tribunal

_for the Crime of Aggression Against Ukraine Jurisdictional challenges and international legal response in the context of ECtHR case law Pravo Ukrainy Law of Ukraine_5_9_42.

⁵¹ THE PROTECTION OF THE ACCUSED IN INTERNATIONAL CRIMINAL LAW ACCORDING TO

In this case, Ukraine can create initiatives to collect testimonies and evidence through independent journalists and organizations working in wartime. Involving local civil society activists and international human rights groups in documenting crimes can help gather additional evidence that confirms the systematic and massive scale of genocide. Since the deportation of children and civilians is one of the elements of genocide, Ukraine can organize programs to provide psychological support to victims and witnesses, as well as to systematically document their testimonies and personal stories. Ukraine can work closely with human rights organizations, such as Human Rights Watch, Amnesty International, and others, to monitor human rights violations and genocide.

The main types of evidence used in the ICC are: Statements from victims, eyewitnesses and experts are important for establishing the facts. Their reliability is checked taking into account possible pressure or influence. Important documents such as military reports, official correspondence and interrogation protocols are used to confirm the facts related to the accusation. Physical objects (weapons, remains at the crime scene, etc.) are important elements of the evidentiary base. The involvement of scientists and technical experts allows to confirm the authenticity of the evidence, particularly in the context of digital materials. The role of digital technologies in the investigation of

genocide in Ukraine is crucial⁵². Even researchers are advising on ways to use artificial intelligence technologies as a way to combat genocide⁵³.

According to the researchers, the collection and assessment of evidence in the context of international crimes faces a number of problems, including: In armed conflicts, it is often difficult to obtain direct evidence or documents due to limited access to the areas where the crimes were committed. Testimony can be distorted due to pressure or manipulation by outsiders. Digital evidence, including social media data, satellite imagery and video, requires special technologies to verify its authenticity.

The issue of correlating the rules of evidence in the International Criminal Court with national procedures, especially regarding the use of electronic evidence, is important. In this context, the Supreme Court plays a key role, which must ensure the unity and consistency of judicial practice, in particular by harmonizing it with international standards. The adaptability of the legal positions of the Supreme Court regarding evidence in criminal proceedings is particularly relevant. The relevant legal position is set out in the resolution of the Joint Chamber of the Cassation Criminal Court of the Supreme Court of Ukraine dated March 29, 2021 in case No. 554/5090/16-k⁵⁴.

Evidence accumulated on electronic evidence collection platforms held by state bodies of foreign states and

THE HUMAN RIGHTS LAW STANDARD. URL: <https://intapi.sciendo.com/pdf/10.2478/wrlae-2013-0026>

⁵² Shevchuk V.M. The role of digital technologies in documenting and investigating genocide in Ukraine. Genocide in Ukraine: problems of proof and punishment: materials of the international scientific-practical round table, Kharkiv, December 17, 2024. Research Institute for the Study of Crime Problems named after Acad. V.V. Stashys, National Academy of Sciences of Ukraine; V.M. Koretsky Institute of State and Law, National Academy of Sciences of Ukraine. Kharkiv: Law, 2024. C. 81-85. DOI: <https://doi.org/10.31359/9786178518677>

⁵³ Zhuravel V.V. The use of artificial intelligence technologies as a promising direction of countering genocide. Genocide in Ukraine: problems of proof and punishment: materials of the

international scientific-practical round table, Kharkiv, December 17, 2024. Research Institute for the Study of Crime Problems named after Acad. V.V. Stashys, National Academy of Sciences of Ukraine; Institute of State and Law named after V.M. Koretsky, National Academy of Sciences of Ukraine. Kharkiv: Law, 2024. C. 36-41. DOI: <https://doi.org/10.31359/9786178518677>

⁵⁴ Resolution of the Joint Chamber of the Criminal Court of Cassation of the Supreme Court of March 29, 2021 in case No. 554/5090/16-k. URL: <https://reyestr.court.gov.ua/Review/95848991>

international organizations requires the same assessment as other electronic evidence⁵⁵.

Screenshots play an important role in preserving and protecting information, ensuring its authenticity, accessibility, and identity. This is in line with the standards set out in the Berkeley Protocol, as reflected in the ruling of the Criminal Court of Cassation of the Supreme Court of Justice of 30 January 2025 in case No. 490/6113/22⁵⁶. At the same time, it is important that national investigative bodies, when collecting information that could potentially acquire the characteristics and properties of evidence, and when working with open sources of digital information, take into account the jurisdictional admissibility of the evidence base formed⁵⁷. The case law of the European Court of Human Rights (ECHR) shows that this body does not perform the function of a cassation instance in relation to national courts and, as a rule, does not review the correctness of the assessment of evidence carried out by the courts of the States parties to the Convention. This is confirmed by a number of decisions of the Court, in particular in the cases of *Teixeira de Castro v. Portugal*⁵⁸ (application no. 25829/94, § 34), *Shabelnyk v. Ukraine*⁵⁹ (application no. 16404/03, § 54), *Bykov v. Russia*⁶⁰ (application no. 4378/02, § 89)

and *Nechyporuk and Jonkalo v. Ukraine*⁶¹ (application no. 42310/04, § 259).

However, the ECtHR does not consider the question of whether certain types of evidence may be admissible per se. The relevant legal position is set out in the decision in the case of *Lutsenko v. Ukraine* (application no. 30663/04, § 42)⁶². However, the ECtHR stresses that the assessment of evidence must be carried out by national courts with due regard for the fundamental rights of the individual, as derived from the content of Article 6 of the Convention.

ECtHR's decisions often examine whether sufficient evidence has been provided to prove human rights violations, such as:

- Torture and inhuman treatment: In cases concerning violations of the prohibition of torture (Article 3 of the European Convention on Human Rights), the ECtHR examines whether there is sufficient evidence to prove the facts of torture, using the testimonies of victims, medical reports and other materials.

- Unlawful detention: In cases of violations of Article 5 of the Convention, which guarantees the right to liberty and security of person, the proof consists in providing documentary evidence of the lawfulness and reasonableness of the detention of individuals, including court orders and relevant actions of law enforcement agencies.

⁵⁵ European Convention on Human Rights. URL: <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-6>

⁵⁶ Resolution of the Criminal Court of Cassation of the Supreme Court of January 30, 2025 in case No. 490/6113/22. URL: <https://reyestr.court.gov.ua/Review/125028785>

⁵⁷ Havryluk L. V., Basysta I. V., Shevchyshen A. V. and others. *USE OF ELECTRONIC EVIDENCE DURING THE PRE-TRIAL INVESTIGATION OF CRIMES AGAINST PEACE, HUMAN SECURITY AND INTERNATIONAL LEGAL ORDER (THE BERKELEY PROTOCOL)* Scientific-and-practical guidelines. Kyiv: DNDI MVS of Ukraine; Publishing house "Polytechnika", 2024. C.40, 54-83 (196 c.) https://www.researchgate.net/publication/385514719_Vikoris_anna_elektronnih_dokaziv_pid_cas_dosudovogo_rozsliduvann_a_zlociniv_proti_miru_bezpeki_ludstva_ta_miznarodnogo_pra_voporadku_Protokol_Berkli_naukovo-practicienij_poradnik?fbclid=IwY2xjawHkqitlHRuA2FlbQIxM

AABHR0H3PLkRS0-pRUg4ZxJ8b3Yn35HF_1-JWpuBHLu2lMXNlbfYiR2cKlgwg_aem_Un_o_sP6mw83lJaKOeeZog

⁵⁸ *Teixeira de Castro v. Portugal* URL: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-58193%22%7D>

⁵⁹ *Shabelnyk v. Ukraine*. URL: <https://hudoc.echr.coe.int/rus#%7B%22itemid%22%3A%22001-188211%22%7D>

⁶⁰ *Bykov v. Russia*. URL: <https://hudoc.echr.coe.int/eng?i=001-91704>

⁶¹ *Nechyporuk and Jonkalo v. Ukraine*. URL: <https://hudoc.echr.coe.int/ukr#%7B%22itemid%22%3A%22001-204031%22%7D>

⁶² *Lutsenko v. Ukraine*. URL: <https://hudoc.echr.coe.int/eng?i=001-192469>

- **Right to a fair trial:** The ECtHR often examines cases related to the lack of adequate legal assistance or violations of the right to effective access to a court, which may include an examination of the evidence as to the correctness of the evidence provided by the judicial authority, as well as an assessment of possible restrictions on access to justice.

- One of the determining factors in ensuring this right is the proper protection of the professional rights of lawyers, as they play a key role in guaranteeing effective legal protection. In order to strengthen the legal status of lawyers and their independence, the Council of Europe adopted the Convention on the Protection of the Profession of Lawyers on 12 March 2025⁶³. This document guarantees lawyers the opportunity to provide legal assistance, represent clients and act in their interests without undue restrictions. In particular, lawyers have the right to free access to clients, even if they are deprived of their liberty, as well as to materials necessary for the effective protection of their rights. The Convention provides for guarantees of lawyers' independence, including the right to confidential communication with clients, protection from coercion to disclose information and freedom to

submit procedural documents without the threat of legal liability. Lawyers also have the right to participate in court hearings, submit motions and statements in the interests of their clients, including the recusal of judges or prosecutors.

The ICC, established to investigate and punish those responsible for the most serious international crimes, has jurisdiction over war crimes, crimes against humanity, genocide and aggression. On the other hand, the ECHR, which is a judicial organ of the Council of Europe, enforces the European Convention on Human Rights, which covers violations of human rights, including the right to a fair trial, protection from torture and other inhuman treatment, and the rights to life and liberty. Although these bodies have different jurisdictions, their work often overlaps in cases where mass human rights violations amount to international crimes.

The ICC and ECHR can cooperate through information and evidence exchange. For instance, in cases where human rights violations form part of war crimes or genocide, the ECtHR can provide documentation—such as evidence of torture—that may be used before the ICC.

Challenges of ensuring justice in genocide cases

The politicization of international justice is the process by which the political interests and ideological beliefs of states or international organizations influence legal procedures, standards of proof, and the outcome of trials⁶⁴.

Politicization can manifest itself in the investigation of genocide cases, particularly when States use international bodies to advance their own political

interests. The ICC, established to investigate the most serious international crimes, including genocide, has an important role in ensuring international justice. However, as practice shows, the political interests of States can significantly influence the consideration of genocide cases. The ICC, like other international courts, has faced criticism for its selectivity in its investigations.

⁶³ Convention on the Protection of the Profession of Lawyers on 12 March 2025. URL: <https://www.coe.int/en/web/portal/-/council-of-europe-adopts-international-convention-on-protecting-lawyers>

⁶⁴ Politics and Justice at the International Criminal Court. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4965347

Although the ICC aims to be impartial, judges and prosecutors can be subject to political pressure from states that may seek to influence the course of investigations and decision-making. Political forces can encourage the closure of certain cases or, conversely, the intensification of processes against other countries.

One of the most well-known examples of politicization in genocide investigations is the situation in Rwanda. The International Criminal Tribunal for Rwanda (ICTR) has faced criticism for its selective approach to genocide investigations⁶⁵. In 1994, Rwanda witnessed the genocide, which killed an estimated 800,000 people, mostly Tutsis. The ICTR was established to investigate crimes committed during the conflict and to ensure justice for the victims. The tribunal has convicted many high-ranking officials and military personnel, including Jean-Paul Akaiza, who was sentenced to 25 years in prison for his role in attempting to commit genocide. A similar situation is observed in the context of the Hague Tribunal. Some critics argue that international courts do not always give equal attention to all parties to a conflict when it comes to serious international crimes.

International Criminal Tribunal for the former Yugoslavia (ICTY)⁶⁶. The investigations and trials of those responsible for crimes committed during the breakup of Yugoslavia are also important for ensuring justice in genocide cases. One of the most famous trials is that of Ratko Mladić, the commander of the Army of Republika Srpska, who was sentenced to life imprisonment for crimes committed during the Bosnian war,

including the massacres in Srebrenica, where more than 8,000 Bosnian Muslims were killed. Mladić's trial was an important milestone in establishing international criminal responsibility for genocide.

International Court of Justice (ICJ). In 2020, Gambia filed a case against Myanmar at the International Court of Justice, accusing it of committing genocide against the Rohingya Muslim minority. The court granted interim measures, ordering Myanmar to take steps to prevent further genocide.

Bosnian genocide (1992–1995)⁶⁷. The Bosnian War resulted in numerous crimes, including genocide. The Srebrenica massacre was one of the largest acts of genocide, when Serbian forces killed over 8,000 Bosnian Muslims in a matter of days. In 2001, the International Criminal Tribunal for the former Yugoslavia convicted the main perpetrators of the Srebrenica genocide. During the Bosnian War, over 100,000 people were killed and over 2 million became refugees.

Genocide in Myanmar (2017–present)⁶⁸. The United Nations estimates that around 740,000 Rohingya Muslims have been forced from their homes by violence by Myanmar's military forces, which has been part of a genocide. The violence has included killings, rape, torture and the destruction of villages. According to Amnesty International, more than 40,000 people have been victims of the violence, and many have become internally displaced. Investigations have shown that the genocide against the Rohingya is part of a broader strategy to destroy this ethnic and religious population.

⁶⁵ International Criminal Tribunal for Rwanda. URL: <https://unictr.irmct.org/>

⁶⁶ International Criminal Tribunal for the former Yugoslavia. URL: <https://www.icty.org/>

⁶⁷ Bosnian genocide. URL: <https://museeholocauste.ca/en/resources-training/the-bosnian-genocide/>

⁶⁸ Genocide in Myanmar. URL: <https://www.hrw.org/news/2022/08/24/myanmar-no-justice-no-freedom-rohingya-5-years>

Interaction with international organizations, such as the International Criminal Court (ICC) and the European Court of Human Rights (ECHR), is an important part of the legal context in which Ukraine is fighting for justice and accountability within the framework of international norms. The political aspect of this process is important: the international law on which the decisions of such bodies are based directly interacts with the geopolitical situation.

International bodies influence the qualification of crimes committed during Russian aggression. The ICC plays a key role in determining whether events in Donbas and Crimea constitute genocide or

war crimes, while Ukraine seeks recognition of Russia's actions as genocide to strengthen accountability. The ECtHR protects victims' rights in conflict zones, and its decisions—especially on Crimea and Donbas—support evidence gathering, crime qualification, and can lead to sanctions or other measures against Russia.

In the framework of the Ukrainian case, international justice can also play a role not only in the fight for justice, but also in efforts to peacefully resolve the conflict. The decisions of the ICC or the ECHR may create additional pressure on Russia, forcing it to negotiate or make international compromises.

Prospects for international justice in the context of the Ukrainian case

In the context of the armed conflict in Ukraine, international justice is of key importance for ensuring justice, punishing the guilty and restoring law and order. Ukraine, as a state that has become a victim of aggression, is actively engaging international justice mechanisms to investigate crimes committed during the war.

The International Criminal Court has an important role in investigating and punishing those responsible for crimes committed during the war in Ukraine. Based on Ukraine's ratification of the Rome Statute, the ICC has jurisdiction over crimes committed on its territory, in particular in matters related to genocide, war crimes and crimes against humanity. Ukraine actively cooperates with international legal institutions and organizations, such as the United Nations (UN), the European Union (EU), as well as international humanitarian organizations, which assist in collecting evidence and providing support to victims.

The consideration of genocide cases can contribute to strengthening international support for Ukraine,

including economic, political and humanitarian assistance. International justice programs contribute to improving cooperation between national and international bodies, building institutional capacity and improving the skills of law enforcement officers, judges and prosecutors. Due to the genocide investigation process, Ukraine may face some internal challenges, including political and social aspects related to reconciliation and national unity.

The Ukrainian case may also contribute to improving legal mechanisms for protecting victims, punishing the destruction of cultural heritage, and creating new norms of international law to combat new types of crimes in hybrid wars.

Proposals provided by researchers on improving Ukraine's cooperation with the International Criminal Court (ICC) and other international institutions:

1. Ukraine should conclude new or improve existing bilateral agreements with the ICC and other international judicial bodies to ensure effective

exchange of evidence, provision of witnesses and implementation of court decisions at the national level. This will speed up the processes of investigations and punishment, as well as reduce administrative barriers.

2. Ukraine needs to adapt national legislation to the requirements of the ICC, in particular, create mechanisms for the rapid execution of decisions of international courts, including on the extradition of accused persons. This includes ensuring adequate legal assistance for investigations of international crimes on the territory of Ukraine and creating favorable conditions for the execution of international arrest warrants. Researchers also quite rightly state that the direction of adaptation of criminal legislation is not entirely correct. In particular, in the context of the national criminalization of genocide, it is about the newly created flaw of Article 442 of the Criminal Code of Ukraine by the legislator, which is that, unlike the Elements of Crimes, which provide an exhaustive list of manifestations of genocide in the form of “causing serious bodily or mental harm”, the note to Article 442 of the Criminal Code defines the concept of “serious harm” by means of a closed list. Konstantin Zadoya correctly emphasizes that “according to the practice of the ICC, this form of genocide can also be manifested in other actions, for example, in the forcible transfer of members of a protected group, which is extremely relevant for the Ukrainian situation⁶⁹.”

3. For proper coordination of investigations and trials, Ukraine can

create joint working groups with the ICC, including lawyers, prosecutors and experts. This will facilitate the rapid collection of evidence, streamline processes, and avoid duplication of effort.

4. To ensure the implementation of the decisions of the ICC and other international institutions, Ukraine may establish independent bodies to monitor the implementation of international judicial decisions, including the verification of the execution of sentences and compensation for victims.

5. Effective mechanisms should be established to protect witnesses and victims who may be involved in ICC proceedings to ensure their safety and the ability to testify without risk to their lives. This includes the development of resettlement and protection programs for persons participating in investigations.

6. Ukraine should actively contribute to the reform of international criminal law, in particular through cooperation with the ICC to improve existing norms, in particular regarding mechanisms for bringing to justice crimes related to hybrid warfare, terrorism, and the destruction of cultural heritage.

In general, successful cooperation with the ICC and other international institutions depends on the active political will of Ukraine, as well as the readiness to adapt national legislation to the requirements of international legal standards. Only through deep integration of international and national justice can justice be achieved for the victims of war and ensure accountability for those who committed war crimes.

Conclusions and recommendations

⁶⁹ Kostyantyn Zadoya Chronicles of the birth of a cargo cult: how and why the process of harmonizing Ukrainian criminal legislation with international criminal law is moving in the wrong direction. 11.12.2024. <https://ccl.org.ua/positions/hroniky-narodzhennya-odnogo-kargo-kultu-yak-ta-chomu-proczes-garmonizaczii-ukrayinskogo-kryminalnogo-zakonodavstva-z-mizhnarodnym->

kryminalnym-pravom-ruhayetsya-u-nepravylnomu-napryamku/?fbclid=IwZXh0bgNhZW0CMTEAAR3Co4UvmlUtTXsnSfsb_XTcIH-85OLm3xor-BzMNS2kokXYTHdB5JJa5oo_aem_aMbPPr6XrW-gn_KXXwmosQ

Ukraine has a significant evidence base to initiate a case on human rights violations, including acts of genocide committed by Russia during the armed conflict. In accordance with international standards, in particular the Convention on the Prevention of Genocide, there are clear criteria for defining crimes such as mass murder, deportation, destruction of cultural heritage, and other crimes on ethnic, racial, and religious grounds.

Ukraine has a sufficient amount of documented facts of violations, but collecting evidence of genocidal intent is a complex process. The politicization of international justice creates additional challenges, but there is an opportunity to effectively present evidence through the participation of international human rights organizations and partner states. Ukraine's cooperation with the International Criminal Court, the European Court of Human Rights and other international institutions is an important aspect for the proper investigation of crimes.

Recommendations for Ukraine in further work on proving the genocide: Continued collection of evidence,

especially victim and eyewitness testimony, is key to building a strong evidence base that meets international standards. Ukraine should actively engage international partners, human rights organizations and experts to provide technical and legal support in the process of collecting evidence and presenting the case before international institutions. Ukraine should continue reforms of the national justice system, ensuring its compliance with international requirements, in particular, in the area of cooperation with the ICC.

Thus, the Ukrainian case is a potential precedent for the development of international criminal law, in particular in the context of qualifying genocide in modern armed conflicts, such as hybrid wars. This will create new legal instruments to fight impunity. The genocide trial in Ukraine will help clarify the norms of international criminal law, in particular, to determine the criteria and standards for establishing genocide, as well as to take into account new forms of violations, such as the destruction of cultural heritage and deportation.

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СУДОВІ ПРОВАДЖЕННЯ ЩОДО ГЕНОЦИДУ В МІЖНАРОДНОМУ КРИМІНАЛЬНОМУ СУДІ: ВИКЛИКИ ВСТАНОВЛЕННЯ ФАКТІВ, УКРАЇНСЬКИЙ KEYС ТА СТАНДАРТИ ЄСПЛ

Анотація

Переслідування злочину геноциду в Міжнародному кримінальному суді (МКС) супроводжується суттєвими викликами щодо встановлення фактів, збирання доказів та їх правової інтерпретації. У статті проаналізовано складнощі доведення спеціального наміру (геноцидного наміру), питання допустимості доказів, а також роль міжнародного співробітництва у забезпеченні притягнення винних до відповідальності. Окрему увагу приділено українському кейсу, в межах якого розглядаються правові та процесуальні перешкоди для встановлення факту геноциду відповідно до Римського статуту. Крім того, досліджуються стандарти Європейського суду з прав людини (ЄСПЛ), релевантні для проваджень у справах про геноцид, із акцентом на перетині права прав людини та міжнародного кримінального правосуддя. Порівняння підходів МКС та ЄСПЛ дає змогу продемонструвати необхідність розбудови дієвих механізмів розслідування, належного захисту свідків і дотримання стандартів належної правової процедури. Зроблені висновки підкреслюють важливість посилення міжнародно-правових механізмів з метою підвищення ефективності переслідування за злочин геноциду.

Ключові слова: *Кримінальне провадження, належна правова процедура, допустимість доказів, встановлення фактів, розслідування міжнародних злочинів, міжнародне співробітництво, прокурор, права потерпілих, захист свідків.*

